

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 11-CR-00430 (ARR)

-against-

: United States Courthouse
: Brooklyn, New York

SASSINE RAZZOUK,

: Tuesday, April 3, 2018
: 11:00 a.m.

Defendant.

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TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE ALLYNE R. ROSS
UNITED STATES SENIOR DISTRICT JUDGE

A P P E A R A N C E S:

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1 (In open court.)

2 THE COURTROOM DEPUTY: United States of America
3 against Razzouk, docket number is 11-430.

4 Counsel, please state your name for the record.

5 MR. TUCHMANN: Paul Tuchmann for the United States.
6 Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. TUCHMANN: With me --

9 MS. KEDESHIAN: Claire Kedeshian.

10 MR. TUCHMANN: -- Claire Kedeshian also from our
11 office, and Jaime Turton from the Probation Department is at
12 counsel table as well.

13 MR. ZISSOU: Mr. Razzouk is present, and the counsel
14 Steve Zissou. Good morning.

15 I am joined by our third-year law student who has
16 been working on this case. Her name is Sydney Spinner. With
17 your permission she is going to assist us this morning.

18 THE COURT: That's fine.

19 MR. ZISSOU: Judge, I beg your pardon. Before we
20 begin I just wanted to give our condolences for the loss of
21 your colleague over the weekend, Judge Wexler, who was a great
22 man.

23 THE COURT: Before we proceed to sentencing, I want
24 to address defense counsel's motions for specific performance
25 of defendant's plea agreement and to vacate defendant's guilty

1 plea to Count One of the Information.

2 The history of this prosecution is a bizarre and
3 tortured one. Defendant, a long time section manager at Con
4 Edison's Electrical Control Systems Design Section, pled
5 guilty to acceptance of bribes in violation of 18 United
6 States Code Section 666(a)(1)(B) and three counts of tax
7 evasion in violation of 26 United States Code Section 7201,
8 pursuant to a cooperation agreement. As part of his
9 cooperation, Razzouk agreed to be debriefed and testify
10 truthfully concerning bribes that he received from Rodolfo
11 Quiambao, the president and CEO of Rudell and Associates,
12 Inc., an engineering and design firm that contracted work from
13 Con Edison. Only months before the commence of Quiambao's
14 trial, however, Razzouk breached his cooperation agreement by
15 both proposing in a conversation recorded by Quiambao that he
16 would testify falsely at Quiambao's trial and in the same
17 conversation by importuning Quiambao to testify to the same
18 falsehood. As a result, the Government elected to withhold
19 any 5K letter from Razzouk, and with respect to Razzouk's
20 advisory sentencing guidelines urges that an obstruction of
21 justice enhancement be imposed and that all points for
22 acceptance of responsibility be withheld.

23 Defense counsel asks that I order specific
24 performance of the plea agreement or, in the alternative,
25 issue an order vacating the defendant's guilty plea on the

1 ground that the Government breached the plea agreement. I
2 will do neither because the Government did not breach the plea
3 agreement, the defendant did. The defendant breached his
4 cooperation agreement when he met with Quiambao and offered to
5 perjure himself at Quiambao's trial by violating the terms of
6 the cooperation agreement. Razzouk, not the Government,
7 caused the breach, thereby freeing the Government from its
8 contingent obligations under the plea agreement.

9 Regardless, and contrary to defendant's assertions,
10 the Government has communicated to me the magnitude of
11 defendant's cooperation and I am fully aware that his
12 cooperation to some extent contributed to the successful
13 prosecution of others. I view that cooperation as only
14 marginally mitigating, however, given defendant's subsequent
15 acts that eviscerated the value to the Government of the bulk
16 of his cooperation.

17 With regard to defendant's argument that the
18 Government breached its promise not to oppose a three-level
19 reduction for acceptance of responsibility, the Government was
20 not obligated to advocate for a reduction once the defendant
21 breached the agreement. That's Exhibit F, page 7.

22 In addition, I agree with the Government that it is
23 incomprehensible that the defendant insists on entitlement to
24 reduction for acceptance for responsibility when in his
25 objections to the pre-sentence report and his subsequent

1 submissions he denies responsibility for the very crimes to
2 which he pled guilty. Defendant's motion for the specific
3 performance of the plea agreement is, therefore, denied.

4 Finally, as recently as two business days ago
5 Razzouk proffered yet another rationale to avoid
6 responsibility for his conduct. Specifically, he now urges
7 that his guilty plea allocution before Judge Mauskopf to Count
8 One of the Information, the bribery count, lacked factual
9 basis and that his conviction of that count must, therefore,
10 be vacated. The argument is spurious. Under Title 18 United
11 States Code Section 666(a)(1)(B) bribery in violation of the
12 statute is the acceptance of money as a quid pro quo with the
13 attempt to be influenced in connection with the business of
14 Con Edison. At his guilty plea allocution Razzouk attested
15 that during the period Rudell acted as a contractor for
16 Con Ed. Razzouk, who oversaw the competitive bidding system
17 by which Con Ed awarded certain contracts "accepted United
18 States currency from Rudell" and "received these payments with
19 the intent to influence the awarding of jobs to Rudell."

20 That Razzouk may have attempted to mitigate the
21 degree to which his actions were criminal by qualifying his
22 expressed intent with the phrase "in part" does not undermine
23 his acknowledgement that he accepted money with corrupt intent
24 to favor Rudell in its business with Con Ed in violation of
25 the statute.

1 Specifically, Razzouk explained he "provided
2 benefits to Rudell by, among other things, providing them with
3 additional Con Edison work, assisting them with bids, and
4 approving payment to Rudell for things he was not entitled to
5 approve. Placed in context, it is plain that his use of the
6 word things refers to aspects of work done by Rudell that
7 Razzouk was not entitled to approve. It does not refer to
8 things Razzouk received in exchange for benefits he provided
9 Rudell. It is also clear from his allocution that Razzouk
10 acknowledged acting with the requisite mens rea in violation
11 of the statute.

12 I, therefore, reject Razzouk's challenge to the
13 sufficiency of his guilty plea.

14 Turning to the sentence, I have received, obviously,
15 the pre-sentence report; a September 25th, 2017 letter from
16 you, Mr. Zissou; an October 11, 2017 letter from the
17 Government; a December 6th, 2017 letter from you, with
18 attachments; a February 20th, 2018 letter from the Government
19 with attachments; a March 5th, 2018 letter from you; a
20 March 8th, 2018 letter from the Government with attachments; a
21 March 13th, 2018 letter from the Government; and a March 30th,
22 2018 letter from you, as well as, and I am just going to talk
23 about some of the letters here because the exhibits were too
24 voluminous to go through with you, but all of the exhibits I
25 have; a December 1st, 2017 letter from the Government, this is

1 pertaining to restitution; a memorandum of law in support of
 2 Con Edison's request for restitution from Sassine Razzouk;
 3 defendant's memorandum of law in connection with restitution;
 4 a January 16, 2018 reply from the Government; a reply
 5 memorandum of law in further support of Con Edison's request
 6 for restitution from Sassine Razzouk; and a letter dated
 7 November 30, 2017 from National Union. And, of course,
 8 everything else that came along with that.

9 Mr. Zissou, I am sure you have had ample opportunity
 10 to review all of that with your client?

11 MR. ZISSOU: I have, Your Honor.

12 THE COURT: Mr. Razzouk, are you satisfied you have
 13 had plenty of time to go over with Mr. Zissou the documents to
 14 which I have referred and everything else that you believe
 15 relates to your sentence?

16 THE DEFENDANT: (No response.)

17 THE COURT: Did you not understand me? Do you want
 18 me to repeat that?

19 THE DEFENDANT: Would you, please?

20 THE COURT: Okay. I want to make sure that you have
 21 had an opportunity to review with your lawyer the documents
 22 that I just listed and everything else that you believe is
 23 pertinent to your sentence here.

24 MR. ZISSOU: Well, I should answer that, Judge.
 25 He's had an opportunity to review everything you've just

1 described, but insofar as pertinent to his sentencing, as Your
2 Honor knows we've long made a demand for the job folders from
3 Con Edison and that that request has not been complied with.

4 So I think if Mr. Razzouk were standing here he
5 would be saying to you, Look, we really need those job folders
6 to be able to analyze --

7 THE COURT: Apart from the job folders, have you had
8 a full opportunity?

9 THE DEFENDANT: Not really.

10 THE COURT: I'm sorry?

11 THE DEFENDANT: Not really, no.

12 THE COURT: No?

13 THE DEFENDANT: No.

14 THE COURT: You have not had time --

15 MR. ZISSOU: He said no, he doesn't need -- I'm
16 sorry. What were you saying? What did you say?

17 THE DEFENDANT: Not really.

18 MR. ZISSOU: Not really what?

19 THE DEFENDANT: I didn't have time.

20 MR. ZISSOU: The job folders?

21 THE DEFENDANT: Yes.

22 THE COURT: I think she said aside from the job
23 folders.

24 THE DEFENDANT: No, aside from the job folder, I
25 discussed everything with my lawyer.

1 THE COURT: I have to assume, because I have
2 received so much on this subject that the letters have covered
3 everybody's arguments on the advisory guidelines. Is that
4 right?

5 MR. TUCHMANN: Yes, Your Honor.

6 MR. ZISSOU: Yes, I think that would be so. I mean
7 I have some ideas, insofar as loss issues, as obviously that's
8 a --

9 THE COURT: And they are part of the advisory
10 guidelines --

11 MR. ZISSOU: I beg your pardon?

12 THE COURT: Are you referring to restitution
13 payments or are you referring to loss for purposes of the
14 guidelines?

15 MR. ZISSOU: Loss for purposes of the guidelines.
16 It's all --

17 THE COURT: You haven't covered that in your papers,
18 Mr. Zissou?

19 MR. ZISSOU: No, they have all been covered, but
20 insofar as where we are with it, there is certainly more I
21 have to say about it. And I am happy to do that any time Your
22 Honor gets to loss. I know you are going through --

23 THE COURT: I am going to get to the advisory
24 guidelines, period. I would have assumed that over the last
25 year everybody would have had an opportunity to address, at

1 least, the advisory guidelines, but if you feel there is more
2 you want to say, please, go right ahead.

3 MR. ZISSOU: Well, I guess the question is loss
4 proven by the Government. Again, you're right, I have said
5 this in our moving papers that the Government simply has not
6 proved a loss. And the fundamental issue here is, as the
7 Government has conceded to the pre-sentence report, it's in
8 one of Mr. Tuchmann's letter, Mr. Razzouk did work for
9 Mr. Quiambao. They established, among other things, a company
10 in a foreign country. It's registered. We all know it. I
11 mean we have the -- it's part of disclosure. And he did
12 substantial work for him over the years for which he was paid.

13 The Government has never made a distinction between
14 what he earned and what he did not. I have, in my objection
15 letter and our memorandum I made it clear that I thought the
16 loss, if you will, was in the hundreds of thousands, as
17 opposed to the millions. The Government has never, other than
18 conceding that he did work for him -- again, it's something
19 one cannot deny, the evidence of it.

20 I am prepared to call live witnesses today if Your
21 Honor has any doubt about it. I'm prepared to introduce
22 evidence of trips that they made overseas, of video
23 presentations made, of billion-dollar contracts that
24 Mr. Quiambao --

25 THE COURT: I'm sorry. I understand that you made

1 those arguments in your papers. You never proffered any
2 evidence. You never said I want to call a certain witness to
3 testify.

4 MR. ZISSOU: Well, sure, I did. In a number of the
5 memoranda I said: We are prepared to prove this. We can
6 introduce evidence of that. Again, this is no surprise. The
7 Government has copies of it. They've had it since 2011 when
8 Mr. --

9 THE COURT: I'm sorry, there is one point in your
10 papers where you made reference to a Fatico hearing, but you
11 never told me you wanted to call your client, you wanted to
12 call witnesses, you had evidence to adduce. You never gave me
13 any affidavits.

14 MR. ZISSOU: I beg your pardon, Judge. I am
15 prepared to do that, and blame me if I miscommunicated to the
16 Court, but we are prepared to do that. I have Mr. Razzouk's
17 entire family in the courtroom. His daughters can testify to
18 the relationship with Uncle Rudy --

19 THE COURT: I do not care about his relationship
20 with Quiambao, and I will explain that to you. I do not think
21 it's relevant.

22 MR. ZISSOU: I am not sure what the Court is
23 concerned about.

24 THE COURT: Well, what do you propose? Give me a
25 proffer of what you want to put on.

1 MR. ZISSOU: I will call Mr. Razzouk. I can call
2 his wife, as well, to establish the extraordinary efforts that
3 he made on Mr. Rudell's behalf. Again, no secret here. There
4 is audio, video.

5 THE COURT: I don't think anybody has disputed the
6 fact that your client traveled to far-off places on several
7 occasions in connection with work that he was doing with
8 Quiambao.

9 MR. ZISSOU: It's hardly just that he traveled to
10 far-off locations. The effort that went into presentations,
11 preparation of proposals, people that --

12 THE COURT: I just do not want our time wasted. If
13 you have something specific that you want to put on, I am
14 going to hear it right now.

15 MR. ZISSOU: Okay, I'm ready.

16 THE COURT: Go.

17 MR. ZISSOU: Do you want it through a witness or
18 should we just put it on the audio and it can describe itself?

19 I am entirely at your hands, Judge. I am happy to
20 call Mr. Razzouk and he will explain them to you, and I am
21 not --

22 THE COURT: I am actually quite flabbergasted that
23 you did not before indicate that you wanted to call
24 Mr. Razzouk. I do not really think I want to see a video. I
25 cannot test a video. If you want to call your client, that's

1 fine.

2 MR. ZISSOU: I'm not sure. You are declining to
3 hear the or view the evidence that we are going to submit?

4 THE COURT: But I do not know that your video is
5 evidence. Your video is argument. In the past when I have
6 received videos, I have gotten them long in advance of
7 sentence. They are pictorial arguments.

8 MR. ZISSOU: Right.

9 THE COURT: They are not testimony. They cannot be
10 cross-examined. If you want to call a witness, you can. If
11 you want to call several witnesses, you can.

12 MR. ZISSOU: Okay. Okay, I'm ready.

13 Defense calls Sassine Razzouk.

14 (Defendant takes the stand.)

15 MR. TUCHMANN: Your Honor, if I might have the case
16 agents that are in the gallery come up.

17 THE COURT: Yes, have them come to the table.

18 THE COURTROOM DEPUTY: Please raise your right hand.

19 (Defendant sworn by the Courtroom Deputy.)

20 THE COURTROOM DEPUTY: Please state your name for
21 the record.

22 THE DEFENDANT: Sassine Razzouk.

23 THE COURT: You have to keep your voice up. Have a
24 seat and speak into the microphone, please.

25 MR. TUCHMANN: Your Honor, just for the record, I

1 have Pete Maino, M-A-I-N-O, of Port Authority Inspector
2 General; and Madeline Gorra, G-O-R-R-A, of the IRS Criminal
3 Investigations at counsel table with me.

4 THE COURT: Thank you.

5 S A S S I N E R A Z Z O U K,

6 called as a witness by the Defense, having been
7 first duly sworn/affirmed, was examined and
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. ZISSOU:

11 Q Mr. Razzouk, are you ready?

12 A Yes.

13 Q Just pull the microphone closer to you. You don't have
14 to lean forward.

15 Now, Mr. Razzouk, I am going to get to the point and
16 move this along, if I will. Do you know a person named Rudy
17 Quiambao?

18 A Yes.

19 Q About what year did you first meet, approximately?

20 A Late '80s or early '90s.

21 Q Okay. Did you become friends over the years?

22 A Yes.

23 Q And about when did your friendship blossom, if you will?

24 A After my wife passed away.

25 Q And what year did your wife pass away?

1 A 1999.

2 Q Do you also have two children?

3 A Yes, sir.

4 Q What are their names?

5 A Monique and Danielle.

6 Q How old are they today?

7 A 26 and 28.

8 Q Are they in the courtroom today?

9 A Yes.

10 Q After your first wife died, did you subsequently remarry?

11 A Yes.

12 Q And are you currently married to Grace Razzouk?

13 A Yes.

14 Q Is she also in the courtroom?

15 A Yes.

16 Q Now, there came a point in time after your wife died that
17 you told us that your friendship with Mr. Razzouk blossomed,
18 if you will.

19 Did there come a point in time when you and
20 Mr. Quiambao established a company in a foreign country?

21 A Two of them.

22 Q Right. And looking at --

23 THE COURT: I'm sorry, I didn't hear. What did you
24 say?

25 THE DEFENDANT: Two different companies.

1 THE COURT: Two different companies.

2 THE WITNESS: One in Saudi Arabia and one in Abu
3 Dhabi.

4 BY MR. ZISSOU:

5 Q And looking at the monitor in front of you at --

6 MR. ZISSOU: Just move it up so we can see the Bates
7 number.

8 Q Looking at what's marked as Bates numbers ending 347, do
9 you see that in front of you?

10 (Exhibit published.)

11 A I don't have anything in front of me.

12 THE COURTROOM DEPUTY: Can you see that up there?

13 THE DEFENDANT: No, I can't.

14 THE COURTROOM DEPUTY: It is not showing up on
15 there.

16 THE COURT: You can continue. Can you move mine as
17 far as you can?

18 THE COURTROOM DEPUTY: I will try to. You can stand
19 up.

20 THE DEFENDANT: It is going to be very hard. I
21 can't see that.

22 THE COURTROOM DEPUTY: Stand up.

23 THE DEFENDANT: Yes.

24 BY MR. ZISSOU:

25 Q Mr. Razzouk, do you recognize the document?

1 MR. ZISSOU: Just move it up a little bit so I can
2 see the Bates Number.

3 A Yes, I see.

4 Q And the Bates Number is as we've discussed ending 347.
5 What is that, can you tell the judge what that is?

6 A This is the company that was registered --

7 Q You have to speak a little bit louder because you are not
8 by the mic.

9 A This is the -- this is the company that was registered in
10 Saudi Arabia.

11 Q All right. And do you see the line marked directors?

12 A Yes.

13 Q Who were the directors of this company?

14 A Rudell Quiambao, Sassine Razzouk.

15 Q Is that you, Sassine Razzouk?

16 A Yes.

17 Q Who are the others?

18 A Yong Rhee is a Korean who was living in Saudi Arabia, and
19 Mohammad Sabri ben Abdel-Aziz Ben Sultan Mahmoud, who was a
20 sponsor.

21 Q Who was that?

22 A Who is a sponsor. You need a sponsor in Saudi Arabia in
23 order for you to operate.

24 Q You can sit down now and pull the microphone close.

25 THE COURTROOM DEPUTY: I got it.

1 BY MR. ZISSOU:

2 Q When you say you needed a sponsor to establish a company,
3 what do you mean, to the best of your recollection?

4 A We had a prince that we had to deal with, in which -- in
5 which he sponsors the business, be part of the business,
6 otherwise you cannot operate in Saudi Arabia just as a foreign
7 company.

8 Q And what was the point of the establishment of this
9 company, Mr. Razzouk?

10 A There were a lot of war going on at that time in the
11 Middle East whether it's Saudi Arabia or Dubai and Abu Dhabi,
12 and there were multi-billion-dollar projects which Rudy
13 thought it is an opportunity to actually expand the business
14 and do these multi-billion-dollar projects instead of a
15 thousand or a hundred-thousand projects that we doing in the
16 states.

17 Q And when you say Rudy, you mean Rudy Quiambao?

18 A Yes.

19 Q When did this idea, when did you and Mr. Quiambao start
20 discussing this idea, what year was it?

21 A It was 2006.

22 Q And when did you actually start to travel overseas to
23 advance this enterprise?

24 A Actually, I was sent by Con Edison to go overseas to --
25 as an exchange. So I went to look --

1 Q What year was that?

2 A 2006.

3 Q What happened overseas?

4 A To just learn about the system in, let's say, Paris,
5 London. We traveled to Switzerland. And we got to know the
6 systems, the electrical systems, their reliability, how they
7 operate, the equipment they use, and we tried to improve on
8 our system, maybe by getting ideas from overseas and
9 implementing it.

10 Another -- another group was sent to Tokyo, Japan to
11 do the same thing. And then we came back and we actually
12 suggested ideas that Con Edison can implement as part of what
13 we called a third generation electrical system.

14 Q And how did this idea get communicated to Mr. Quiambao?

15 A Mr. Quiambao knew I was -- I was traveling in -- in
16 Europe and he knew about the whole thing. As a matter of
17 fact, he visit my family when I was actually in Europe to make
18 sure my family is okay. He came in to see my wife a couple
19 times and I communicated with him even when I was in Europe,
20 too.

21 And he sent me some work to do when I went there,
22 and I did actually work for him when I came in one weekend on
23 my birthday from Europe. I flew from London over here in May.
24 I was still participating in the Con Edison exchange program.
25 I was still over there, technically speaking. I paid for my

1 own ticket and I came back home and he came over and he had a
2 job for me to do. And he expected me to take it back with me
3 and then to Fed Ex it to him. I was able to finish it before
4 I left on Sunday. I left it with my wife and she actually
5 delivered that.

6 Q How did this experience get transferred to your effort
7 overseas and we have the commencement of this company, how
8 does that connect?

9 A So for him one day after I came back, one day he
10 approached me and he told me that he met that Korean
11 individual, which we just went through his name, Mr. Rhee, at
12 one of these, you know, like affairs, fundraising in Manhattan
13 or something similar to that. And he said this -- this
14 individual has been in Saudi Arabia for over 30 years. He is
15 a residence of Saudi Arabia. He have a lot of connection over
16 there and he was talking to him about the opportunity, it is
17 the same thing. When I came back from Europe I told him, you
18 know, this is like incredible. All these big projects, like
19 we have electrical project for 4 or \$5 billion.

20 So, obviously, Rudy after speaking with the Korean
21 guy came in and he said, You know, now I have a contact over
22 there. We have a contact, maybe I want to really see what
23 opportunity we could have over there. And everything started
24 after that, like in the end --

25 Q So let's cut to the chase a little.

1 What did Mr. Quiambao need you for, I mean why were
2 you an important factor?

3 A I didn't hear you. Could you repeat that?

4 Q In other words, why did Mr. Quiambao bring this to you?
5 What was your influence? What would you do? Why did he need
6 you is my question?

7 A Because I have the technical expertise and he always
8 thought I had the brain as far as technical work and stuff.
9 And he looked up high on me because from all the project he
10 used to give me, I used to give to him very fast. And I was
11 able to deliver to him a perfect project, quality project.

12 Q And so what role did he anticipate you to play in this
13 overseas venture?

14 A I was his main -- the main consultant. However, he gave
15 me a business card saying I'm a senior VP in his company.

16 MR. ZISSOU: Can we put the card up, Ms. Spinner?

17 (Exhibit published.)

18 BY MR. ZISSOU:

19 Q All right, do you see this, this item? It's been part of
20 our submissions, but is this a business card that has your
21 name on it?

22 A Yes.

23 Q You can sit down, Mr. Razzouk, so you can speak into the
24 microphone.

25 How did you come to receive this card?

1 A This was probably the third type of card he gave me. It
2 is -- Rudy printed these card and gave them to me prior to our
3 trip together to overseas, Saudi Arabia or
4 Dubai.

5 Q And did he list your title on this card?

6 A Yes.

7 Q And what was that?

8 A Senior vice president.

9 Q I notice there is an e-mail address there. Who created
10 that e-mail address?

11 A This was at Rudell's office. This is Rudy gave me that
12 e-mail in which people communicated through his office, then
13 he will actually make hard copies and give them to me to -- to
14 review.

15 Q So with this as a background, did you and Mr. Quiambao
16 then embark on this overseas venture?

17 A Yes.

18 Q And tell us how, what you did to prepare for it and what
19 happened?

20 A We actually created an actual brochure to -- to try to,
21 let's say, sell the company, about their capability and their
22 expertise in the different areas, especially substation and
23 generations. We created -- we created a brochure. We worked
24 on it for maybe a couple of month, and then he have printed
25 these brochure and finalized them to take them with us. As

1 well as I embarked on putting together presentations and
2 seminars that we actually engaged in for a whole week or so.
3 Sometime I -- I traveled for ten days, that including
4 weekends.

5 MR. ZISSOU: All right, let's see if we can dig up
6 the brochure. Do we have it?

7 MS. SPINNER: We have company profile.

8 MR. ZISSOU: Okay.

9 (Exhibit published.)

10 BY MR. ZISSOU:

11 Q Now, can you see that? It may be bigger on the screen in
12 front of you. Can you see that?

13 You've got to speak up when you are away from the
14 microphone. Do you see that?

15 A It does not show on here. I don't see it on my --

16 Q Look on the big screen, it is pretty easy to see.

17 A Oh, okay. Yes.

18 Q Have you ever seen that before?

19 A Of course.

20 Q What is it?

21 A I said this is the brochure we put together as given the
22 indication of what Rudell's capabilities are, the expertise,
23 the different projects that they worked on, their personnel.
24 And we actually took these with us when we traveled overseas
25 and at the presentation or the seminar we distribute them to

1 the individual who were present.

2 Q And about how long did this venture last, from 2006 to
3 when?

4 A Well, we start working in 2006 putting the stuff
5 together. The first trip, it was 2007.

6 Q Hold the microphone close to you.

7 A The first trip was 2007, and then the last trip was 2010,
8 and around June of 2010 this is when the -- Rudy Quiambao kind
9 of made a decision to cease the operations overseas because we
10 were not getting jobs from overseas.

11 Q So despite all of the efforts that you made, the venture
12 was a failure, if you will, is that right?

13 A We -- we did put a proposal for a lot of jobs. We bid on
14 a lot of job, but none of them really materialized.

15 Q To your knowledge, did Mr. Quiambao invest a lot of money
16 in this project?

17 A Yes, he did.

18 Q How much do you think he invested in the project?

19 A Well, I can tell you, and I provided a spreadsheet, he
20 was paying, you know, Korean guy over \$30,000 a month.

21 Q Right.

22 A And he was just a contact for us, that's all what it was,
23 what he was.

24 Q And, obviously, he also compensated you for your efforts,
25 is that right?

1 A Absolutely.

2 Q Did you, during this time period, 2006 to 2010, also work
3 for Con Edison, obviously?

4 A Yes, I did.

5 Q Did you -- withdrawn.

6 There came a point in time when you were arrested in
7 this case, is that right?

8 MR. ZISSOU: Oh, there we are. So this is --

9 A The one before that, the one before. The Staten Island,
10 New York. This was really working as satellite office, what
11 meant Staten Island, New York. I was his satellite office in
12 Staten Island.

13 Q Right.

14 A I am the individual that did the work from and that is
15 the presentation we gave overseas.

16 Q And this is an organizational chart, I take it?

17 A Yes.

18 Q And while you were in -- I'm sorry, let me come back a
19 second. While you were in these foreign countries, did you
20 meet with people?

21 A Absolutely.

22 Q Did you give presentations?

23 A Every day.

24 Q Did you take photographs, for example, of yourself and
25 Mr. Quiambao when you were there?

1 A Mr. Quiambao took picture of me. I never took picture of
2 myself.

3 MR. ZISSOU: Can we have a couple of those?

4 (Exhibit published.)

5 MR. ZISSOU: Let's see if we can bring that up.

6 BY MR. ZISSOU:

7 Q What is this a photograph of, Mr. Razzouk?

8 (Exhibit published.)

9 A This was --

10 Q Who is in this photograph?

11 A This was in Abu Dhabi. I finish giving a presentation,
12 the individual in the middle he was in charge of the -- this
13 is a government representative for the electricals [sic] --
14 you know, he's in charge. He's like, maybe, a minister of, I
15 don't know what you call him exactly, what's his title, but he
16 was in like in a higher government position. As a matter of
17 fact, this is the actual individual who offered me \$330,000 a
18 month salary that if I actually go and sign up a contract with
19 him to do some work over there that was going at the time.

20 Q Are you in this photo as well?

21 A Excuse me?

22 Q Are you in the picture as well?

23 A Yes, I am.

24 Q Is Mr. Quiambao in the photo?

25 A Yes, right on the other side of the -- the individual.

1 Q And who are the folks?

2 A And that Korean guy is --

3 Q Mr. Rhee?

4 A -- Mr. Rhee. And this is what they call, he's like a
5 doctor at a university. He used to be like one of the people
6 we dealt with when we went to Saudi Arabia and stuff.

7 Q All right. Now, did Mr. Quiambao also establish a
8 relationship with people in your family?

9 A He was -- I consider him a family member.

10 Q And did he attend family events with you?

11 A Yes, sir.

12 Q Did he meet your children?

13 A Absolutely.

14 Q Did your children have a name for him?

15 A Uncle --

16 Q What did they call him?

17 A -- Rudy.

18 Q Did they meet Uncle Rudy's wife?

19 A Absolutely.

20 Q Did they visit him at his place in the Poconos, for
21 example?

22 A He visited our place and we visited his place.

23 Q And this relationship went on for almost a decade, am I
24 right?

25 A Over a decade.

1 Q Did you ever threaten or promise to hurt him in any way?

2 A No.

3 Q Did you, in fact, make him the executor of your estate?

4 A Yes.

5 MR. ZISSOU: Can we have the will up, please?

6 (Exhibit published.)

7 BY MR. ZISSOU:

8 Q And is this your Last Will and Testament?

9 A Yes.

10 Q And how did you come to make him the executor of your
11 estate?

12 A I said I consider he's the only person I really called my
13 best friend. He was a family to me since I didn't have a
14 family around. He treated my family very well. We always --
15 you know, my kids had a great time. They used to look forward
16 when it is their birthday so they can actually sing with the
17 dog. His dog used to sing happy birthday to them and they can
18 enjoy that very much, especially my youngest. And when we
19 were traveling to Saudi Arabia I felt very uncomfortable. At
20 the hotel we used to go to, there is like tanks outside, there
21 is Army, it's like protected, and and I didn't have a
22 comfortable feeling every time I traveled.

23 And after our first trip, we discussed, I said, You
24 know, I feel very uncomfortable inside. And in Dubai it was
25 okay, it was fine, except Saudi Arabia I felt very

1 uncomfortable.

2 Q Unsafe?

3 A So he actually said, Do you have a will yet. I said, No.

4 And I said, you know, I want you, of course, to take or look

5 after my family if in the event anything happen to me. So

6 he's the person who arranged. He knew the lawyer. I didn't

7 know any lawyers or anything. I never did any legal papers.

8 Q So he referred you to the lawyer?

9 A He actually was with me. He went with me. He met me

10 there. He gave me the address, whatever it is, and he

11 actually met me at the lawyer's office, and we did that.

12 MR. ZISSOU: Can we have the photos, the family
13 photos from this point?

14 (Exhibit published.)

15 A This is my daughter's maybe Sweet 16.

16 Q That is a photo of your daughter's Sweet 16 you said.

17 And who is --

18 A I'm not sure if it's Sweet 16 or something, one of the

19 affairs. I'm not -- I mean he was in all the affairs, so I

20 don't know which.

21 Q And is that --

22 A They would probably know more than I do.

23 Q Is that Uncle Rudy in the photograph?

24 A This is Uncle Rudy and his wife Connie.

25 Q And who were they sitting next to?

1 A This is my daughter Danielle.

2 MR. ZISSOU: Let's have another photo.

3 (Exhibit published.)

4 BY MR. ZISSOU:

5 Q And who is in this photo may I ask?

6 A This is in my house, and this is the house I live in
7 right now. This is like in our family room and this is my
8 daughter Monique and his dog, Peachy, and Rudy Quiambao.

9 MR. ZISSOU: Next.

10 (Exhibit published.)

11 Q And who are these folks?

12 A This is -- we were in the house in the Poconos. This is
13 the au pair.

14 Q Rudy's au pair or your au pair?

15 A No, this is originally the au pair I tried to get take
16 care of my kids. This is Monique, my daughter, and again this
17 is Peachy.

18 Q That is Uncle Rudy's dog?

19 A Mr. Quiambao's dog.

20 (Exhibit published.)

21 Q This is you and your daughter, right?

22 A Yes.

23 (Exhibit published.)

24 Q And who are these folks?

25 A This is in the house in the Poconos: Mr. Quiambao, his

1 wife Connie, and Monique and Danielle.

2 Q And would it be fair to say that, Mr. Razzouk, you have
3 many of these photos and many of them you have given to the
4 attorney for the Government some years ago?

5 A Yes.

6 MR. ZISSOU: I have no other questions.

7 MR. TUCHMANN: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. TUCHMANN:

10 Q Hello, Mr. Razzouk. My name is Paul Tuchmann. I am a
11 federal prosecutor.

12 You and I have never met before, correct?

13 A Correct.

14 Q So you just testified under oath about work that you did
15 for Mr. Quiambao, correct?

16 A Yes.

17 Q Yourself just said that none of that work led to any
18 contracts or income for Mr. Quiambao's company, correct?

19 A That's what I know.

20 Q You don't have any employment agreement with
21 Mr. Quiambao's company for that work, do you?

22 A No.

23 Q And you never sent him any invoices for work that you did
24 for that?

25 A No.

1 Q And you never got anything like a 1099 from his company
2 for that money?

3 A No.

4 Q So you testified that you first went overseas, I think
5 you said in 2006?

6 A Correct.

7 Q And that the work started a little more in earnest around
8 2007, is that right?

9 A Yes, but 2006 I did not start work for Rudell, it was as
10 I said, I was sent by Con Edison.

11 Q Correct, and so you started doing this work overseas for
12 Rudell in 2007 or was it later?

13 A No, we start putting the brochures in 2006, like
14 September 2006 and we traveled --

15 Q Right.

16 A -- in 2007.

17 Q You have this company MDM Capital, correct?

18 A That's correct.

19 Q You were receiving checks from Mr. Quiambao's companies
20 into MDM Capital since the year 2000, correct?

21 A Maybe 1999, too.

22 Q Right. And so that was long before you began even
23 thinking about doing work overseas with Mr. Quiambao in 2006,
24 correct?

25 A Yes.

1 Q And I think you just testified that you -- that
2 Mr. Quiambao kind of, I guess, pulled the plug, to use a
3 phrase, on this work overseas in June of 2010, correct?

4 A Yes.

5 Q And you were arrested in January 2011, right?

6 A Yes.

7 Q Okay. But you continued to receive checks from
8 Mr. Quiambao's companies into MDM Capital between June of 2010
9 and your arrest in January of 2011, correct?

10 A I was doing work.

11 Q I'm sorry?

12 A I was doing work for him.

13 Q You were doing it. So even though he had pulled the plug
14 on the overseas work, you were doing other work for him?

15 A We were preparing to go to the Philippine and we started
16 to actually do some work and he gave me the layout or -- or
17 the design criteria for whatever the Filipino electrical
18 system looked like. And he wanted me to start now because the
19 Aquino son of the late Mr. Aquino became a president of the
20 Philippine and this is why really he pulled the plug from the
21 Middle East because he thought now in the Philippine he knows
22 the Aquino and he will have -- definitely have an opportunity,
23 it is like almost a guarantee, that he will get work there.

24 Q Okay.

25 A So yes, I was working for him still.

1 Q So do you know those checks, the ones that you received
2 in the second half of 2010 into 2011, those had memo notations
3 that were associated with Con Ed jobs, correct?

4 A I didn't know that.

5 Q You didn't know that. You thought those notations were
6 for something related to something else?

7 A I didn't see the notations.

8 Q Well, did you have the checks? Did you see them before
9 you deposited them?

10 A Well, I used to, as I told the prosecutor before, I used
11 to get an envelope and go home, turn the check around, sign
12 them, give them either to my -- to my wife or to my son and
13 they will actually deposit them.

14 Q And so you were receiving these checks with these
15 notations for over four years and you never actually looked at
16 them, is that your testimony?

17 A Exactly.

18 Q Okay. So you received approximately between, I think you
19 said, starting in 1999 going until January of 2011,
20 approximately \$13 million into the MDM business from
21 Mr. Quiambao's companies, correct?

22 A I don't know the amount.

23 Q Does approximately 13 million sound fair to you?

24 A (No response.)

25 Q Just call it 12 million, how about that?

1 A Whatever, okay.

2 Q And so all of that money you got for other work for
3 Mr. Quiambao, is that what you're saying?

4 A Yes, sir.

5 Q And you say that -- well, sir, do you remember when you
6 pleaded guilty before Judge Mauskopf on June 10th, 2011?

7 A Yes.

8 Q Do you recall that you were sworn in and placed under
9 oath at that time? Do you recall that?

10 A Most likely I did, but I don't remember anything. Most
11 likely.

12 Q You don't remember anything that day?

13 A Most likely I was sworn in, yes.

14 Q Okay. And you had an attorney there with you at that
15 time, correct, who was representing you?

16 A Yes.

17 Q And you told the judge that you were satisfied with that
18 attorney's representation, correct?

19 A I don't think it was asked.

20 Q You don't think it was asked.

21 So if the Court said, Judge Mauskopf said: Have you
22 been satisfied with the efforts of Mr. Morvillo, that's your
23 attorney then, correct?

24 A Yes.

25 Q On the efforts that Mr. Morvillo has made on your behalf

1 to this point; and you said, Yes, I am.

2 Do you remember that?

3 A You're reading it, so I must have said it.

4 Q Well, and the Court said: Do you feel you need any more
5 time to discuss with him the waiver of indictment or guilty
6 plea; and you said, No; and that was all under oath too,
7 right?

8 A Yes.

9 Q Okay. And you were told multiple times during that plea
10 hearing by the judge that you were charged in Count One with
11 bribery, correct, she used the word bribery a number of times?

12 For example on page 19 it says Count One charges you
13 with bribery. Do you recall generally the judge --

14 A Yes.

15 Q -- talking to you, telling you that you were pleading
16 guilty to bribery?

17 A To my understanding of bribery, yes.

18 Q And you said during your plea allocution that during this
19 period, I mean the period charged in the Information of 2006
20 through 2011, during this period I accepted United States
21 currency from Rudell and Associates. I received these
22 payments, in part, with the intent to influence with respect
23 to awarding jobs to Rudell in excess of \$5,000.

24 You said that under oath, right?

25 A Yes.

1 Q Now, at that time when you said that, you knew all these
2 things that you know now about what you're claiming now about
3 why you received this money from Mr. Quiambao, correct?

4 MR. ZISSOU: Objection.

5 BY MR. TUCHMANN:

6 Q Or have you learned it since then?

7 MR. ZISSOU: I object to the form of the question.

8 THE DEFENDANT: Excuse me.

9 THE COURT: Overruled. Go ahead.

10 Do you understand the question?

11 A Could you repeat it?

12 Q At the time that you pleaded guilty in January of 2011 --

13 A That's correct.

14 Q -- you knew that you had traveled to the Middle East --

15 A Of course.

16 Q -- for Mr. Quiambao --

17 A Yes.

18 Q -- in 2007, 2008?

19 A Yes.

20 Q Right. But you didn't say anything about that at the
21 time you pleaded guilty under oath, correct, in January 2011?

22 A I don't remember, no. I don't know.

23 Q Do you think you might have said something to the Court
24 during the plea allocution about the fact that this money was
25 for --

1 A No, I --

2 Q -- the --

3 A No.

4 Q You didn't say that?

5 A No.

6 Q Mr. Razzouk, before you pleaded guilty you had a number
7 of meetings with prosecutors and federal agents, correct?

8 A Yes.

9 Q And during those meetings you said that you had
10 instructed Mr. Quiambao to bid low on jobs to guarantee that
11 Rudell would be awarded the project?

12 A No.

13 Q You never said that to the agents?

14 A That could not happen.

15 Q Well, that is not my question.

16 My question is did you say to the agents that you
17 had instructed Quiambao to bid low on jobs to guarantee that
18 Rudell would be awarded a project?

19 A No.

20 Q You never said that to the agents?

21 A No, sir.

22 Q And so if that is in multiple reports of the meetings
23 with the agents, it still didn't happen?

24 MR. ZISSOU: Object to the form of the question,
25 speculative, if it's.

1 THE COURT: Overruled. Go ahead, you can answer the
2 question.

3 THE DEFENDANT: Could you repeat that question?

4 MR. TUCHMANN: Sure.

5 BY MR. TUCHMANN:

6 Q If there are reports that the agents made of those
7 meetings they had with you before you pleaded guilty, and
8 those reports said that you stated on multiple occasions that
9 you had instructed Quiambao to bid low on jobs to guarantee
10 that Rudell would be awarded a project, it didn't happen even
11 though it's in the reports, correct, is that what your
12 testimony is?

13 A Yes.

14 MR. TUCHMANN: Nothing further, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. ZISSOU:

17 Q Mr. Razzouk, did you tell when you were proffering to the
18 Government, did you tell them that you did work for
19 Mr. Quiambao that had nothing to do with Con Ed?

20 A All the time.

21 Q Did you tell them that you did lots of work for him
22 overseas on this venture you told the judge about?

23 A Yes, sir.

24 Q Is this what you told them literally from the beginning
25 when you started talking to them?

1 A From day one.

2 Q Did you also explain that the process at Con Edison made
3 it virtually impossible for the scam the Government alleged
4 happened here to work the way they say it did?

5 A It could not happen.

6 Q Correct. Did you tell them that?

7 A Yes.

8 MR. ZISSOU: I have no other questions.

9 MR. TUCHMANN: Just one moment, Your Honor.

10 THE COURT: Thank you.

11 (Pause.)

12 MR. TUCHMANN: Nothing further.

13 THE COURT: Okay.

14 THE COURT: Thank you very much. You are excused.

15 (Witness steps down.)

16 MR. ZISSOU: May I just have one moment, Judge?

17 THE COURT: Yes.

18 (Pause.)

19 MR. ZISSOU: Judge --

20 THE COURT: I'm sorry, go ahead.

21 MR. ZISSOU: Judge, what I proffer through Grace
22 Razzouk is that during all of the time that she knew and
23 observed the relationship between Mr. Razzouk and
24 Mr. Quiambao, and I think she met them sometime around 2001,
25 that she never heard a dispute, she never heard any arguments,

1 she never heard anything other than two individuals working on
2 a joint venture and working together.

3 Happy to call her for that, to establish that.

4 THE COURT: No need. No need I am sure.

5 MR. ZISSOU: And, again, the kids would basically be
6 the same. They would talk about the dog and Uncle Rudy. That
7 is the proffer, but I understand I think Your Honor has
8 accepted that.

9 THE COURT: Let me next turn just to the advisory
10 guidelines.

11 As to the advisory guidelines, it is apparent from
12 defense counsel's objections to the pre-sentence report that
13 virtually every aspect of defendant's guidelines calculation
14 is now disputed. More specifically, counsel contests the base
15 offense level of the crime of conviction characterizing his
16 client's plea as one to receipt of gratuities rather than
17 receipt of bribes. He also disputes the loss enhancement
18 directed by Section 2C1.1 of the guidelines, which is
19 determined by the value of the benefits his client received in
20 the bribery scheme.

21 Moreover, by omitting the enhancement from his own
22 calculations, counsel objects to the propriety of imposing on
23 his client an obstruction enhancement. Similarly, by
24 including the deduction in his calculation he disputes the
25 propriety of withholding from his client an acceptance of

1 responsibility deduction.

2 Turning first to the base offense level. It is
3 indisputable, both from the charge in the Information to which
4 the defendant pled guilty and the defendant's plea allocution
5 as corroborated by statements the defendant made in his
6 various proffers to the Government, that defendant entered a
7 guilty plea to acceptance of bribes in violation of 18 U.S.C.
8 Section 666(a)(1)(B), not acceptance of mere gratuities.

9 For example, at his allocution when Judge Mauskopf
10 asked him what conduct he engaged in that established his
11 guilt of "the bribery charge under Count One," Razzouk
12 attested that in his managerial job at Con Ed, which involved
13 overseeing the design of the electrical control systems in New
14 York City and Westchester for Con Ed, he oversaw competitive
15 bidding system by which Con Edison, essentially, awarded
16 contracts to private contractors. In that capacity he
17 allocuted he "accepted United States currency from Rudell and
18 Associates, in part, with the intent to influence the awarding
19 of jobs to Rudell." Moreover, he averred that he
20 "specifically provided to Rudell" by, among other things,
21 "providing Rudell with additional Con Edison work, assisting
22 Rudell with bids, and approving payment to Rudell on contracts
23 with Con Edison for things he was not entitled to approve.

24 During his proffers Razzouk further elaborated that
25 he "agreed to take part in a kickback scheme with Quiambao" in

1 which, among other things he "invited Rudell to make more
2 bids" than any other contractors, "which increased Rudell's
3 chances of getting more work" from Con Ed; that he reviewed
4 and edited Con Ed's bids prior to their formal submission and
5 "warned Quiambao when there was a problem" to enable Rudell
6 "to straighten it out before it was too late," presumably
7 ensuring that Quiambao not lose the contract; that he would
8 give Quiambao advance information about projects, further
9 advantaging Rudell's opportunity to be awarded Con Ed work;
10 that he coached Quiambao "to bid jobs low to guarantee that
11 Rudell would secure the project" assuring Quiambao that his
12 group would take steps "to make up for the low bid" to ensure
13 that Rudell would make profit from the job.

14 That is Exhibit B pages 5 to 8.

15 In fact, although Razzouk claimed not to have
16 initially noticed the notations in the memo section of the
17 checks Quiambao paid him, he acknowledged during his 2011
18 proffers that he "now knows that the memo section did list Con
19 Ed jobs that he had helped Rudell on." Exhibit B, page 7.

20 In a subsequent proffer section, Exhibit C, Razzouk
21 similarly stated that he assisted Quiambao to secure more Con
22 Ed contracts by inviting Quiambao to bid on every job; that he
23 also assisted Rudell by adding more work onto existing
24 contracts for which Rudell would be paid at an increased rate.
25 That's Exhibit C, page 3. In this proffer session Razzouk

1 admitted unambiguously that he did these favors for Quiambao
2 "because Quiambao was giving him a lot of money" and because
3 he "knew the more extras he gave to Rudell, the more money
4 Quiambao would give him." That's Exhibit C, page 3.

5 This record of evidence consisting of Razzouk's own
6 admissions, both under oath at his guilty plea and in proffers
7 to the Government, amply proves by a preponderance that
8 Razzouk accepted money from Quiambao as a quid pro quo with
9 the intent to be influenced in connection with the business of
10 Con Ed. Moreover, it is well settled that bribery "can be
11 accomplished through an ongoing course of conduct, so long as
12 evidence shows that the favor and gifts flowing to a public
13 official are in exchange for a pattern of official actions
14 favorable to the donor. That is United States versus Bahel,
15 B-A-H-E-L, 662 Fed. 3d 610 at 635 to 36, Second Circuit 2011.
16 Accordingly, the guideline determining the base offense level
17 for Count One is Section 2C1.2, fixing the base offense level
18 at 12.

19 Turning to the only enhancement with respect to
20 which there is no dispute, defense counsel, although
21 inaccurately characterizing each payment to Razzouk as a
22 gratuity in lieu of a bribe, acknowledges that there was more
23 than one payment to his client resulting in a two-level
24 offense characteristic enhancement. The enhancement based on
25 the value of payment under Section 2C1.1(e)(2) is, by

1 contrast, hotly contested. Without record citation or
2 reasoning, defense counsel simply asserts in his objections to
3 the pre-sentence report that the amount Quiambao paid his
4 client "was more than \$95,000, but not more than \$150,000."
5 An assertion that under guideline 2B1.1(b)(1) calls for an
6 eight -level enhancement. Nothing in the present record,
7 however, supports such a conclusion or assertion. On the
8 contrary, the existing evidence establishes by a preponderance
9 that an extremely conservative estimate of Quiambao's bribery
10 payments to Razzouk substantially exceeds \$3-1.2 million
11 requiring an enhancement of at least 18 levels. Powerful
12 support for this loss amount is found not only in the
13 statements Razzouk made in his proffers to the Government,
14 referring now to Exhibits B and C, but also in statements and
15 estimates Quiambao made to the Government, Exhibit H.

16 Quiambao's pre-arrest statements and Razzouk's
17 post-arrest admissions corroborate each other concerning the
18 general magnitude of the payments, that is many millions of
19 dollars; the duration of time over which the payments were
20 made, that is over many years; and the purpose of the
21 payments, that is bribes to induce increased business from Con
22 Ed.

23 More conclusively, however, voluminous documentary
24 evidence of the payments, the checks by which the payments
25 were made, identify with specificity the amount paid and the

1 purpose for which they were made. These checks record that a
 2 total of, at least, \$8 million in checks from Quiambao's
 3 entities to Razzouk's company MDM Capital compensated Razzouk
 4 for his assistance to Rudell in connection with specific
 5 identifiable Con Edison jobs on which Rudell was the
 6 contractor. For example, Rudell issued a check to MDM Capital
 7 on April 30, 2007 for \$40,075 with the phrase "various
 8 projects asterisk" in the memo line of the check. According
 9 to Con Ed's business records, the defendant oversaw a project
 10 which requires "review of shop and GE drawings at Astor."
 11 That's at page 3 of the Government's supplemental submission.
 12 Rudell issued a check to MDM Capital on June 29, 2007 for
 13 \$45,000 with the phrase "subcontractor Cherry and E 13 Street"
 14 written in the memo line. According to Con Ed's records, the
 15 defendant oversaw a project which required "removal of
 16 transformer 3 at Cherry Street" page 4.

17 On February 28, 2008 Rudell issued a number of
 18 checks to MDM Capital for various amounts, including one for
 19 \$7,740; another for \$19,435; and another for \$11,000. All of
 20 these checks had descriptions in their respective memo lines
 21 that corresponded to projects the defendant awarded to Rudell
 22 and that Con Ed had similarly described in their internal
 23 records.

24 The same is true for the checks issued by Quiambao's
 25 shell corporation Rudicon to MDM after 2009 when, as both

1 parties acknowledge, there was a crackdown on corruption at
 2 Con Edison. On November 28th, 2009 Rudicon issued a check to
 3 MDM for \$53,000 that had the phrase "subcontractors' fee-PST
 4 Manhattan" in the memo line. In its internal records Con Ed
 5 has a record of a project Razzouk oversaw at that time that
 6 was awarded to Rudell, which Con Ed described as "provide
 7 engineering and design drafting services to scan, print and
 8 prepare PST redline markup drawings packages Manhattan
 9 substation." And the list goes on. There are hundreds of
 10 checks, some for as little as \$4,700 and others for over a
 11 hundred-thousand dollars. Not all of the checks reference
 12 specific projects, but there are an overwhelming number that
 13 do. The pattern is clear, it simply strains credulity that
 14 these checks were not bribes for projects that Con Ed
 15 ultimately awarded Rudell and that the defendant either worked
 16 on or oversaw.

17 I give no credence to defense counsel's most recent
 18 argument that Quiambao referenced Con Ed projects in the memo
 19 lines of the checks he wrote to MDM to set Razzouk up in the
 20 future, nor do I find credible the defendant's testimony
 21 before me today that the money he received from Quiambao was
 22 entirely or even to any significant extent as a result of
 23 legitimate work he did for Quiambao's companies.

24 Defense counsel's extremely low estimation of the
 25 amount of money his client accepted in bribes is also belied

1 by the defendant's consent to a forfeiture money judgment in
 2 the amount of \$6,515,809, money that his plea agreement
 3 described as "property, real or personal, constituting or
 4 derived from proceeds traceable to a violation of 18 U.S.C.
 5 Section 666(a)(1)(B). That's Exhibit F, paragraph 13.
 6 Defendant's willingness to forfeit over \$6 million strongly
 7 corroborates the conclusion that he unlawfully received at
 8 least that amount.

9 Given the abundance of evidence that Razzouk
 10 received over \$3.5 million in bribes during the period of time
 11 covered by his conviction, I conclude that the offense level
 12 should be increased by 18 levels.

13 A two-level enhancement for obstruction of justice
 14 under guideline 3C1.1 is also well supported by a
 15 preponderance of the evidence in the record. On December 17,
 16 2015 after he pled guilty, the defendant arranged to meet with
 17 Quiambao in Atlantic City. Unbeknownst to the defendant,
 18 Quiambao was wearing a recording device. In the conversation
 19 that ensued, Razzouk assured Quiambao that he would lie at
 20 Quiambao's trial evincing his intent to give perjured
 21 testimony, and tried to persuade Quiambao to testify
 22 perjurally in the same matter. Much as defendant does now,
 23 Razzouk sought in that conversation to persuade Quiambao to
 24 confirm his story that all of the money Quiambao paid Razzouk
 25 was for legitimate overseas work, not for unlawful influence.

1 Each time Quiambao protested "that's not true," Razzouk
 2 implored Quiambao to make sure their stories were consistent
 3 with the aim, as identified by Razzouk, to "destroy" the
 4 Government's case. Razzouk's willful breach of his
 5 cooperation agreement with the Government by his determination
 6 to commit and suborn perjury at Quiambao's trial warrants an
 7 obstruction of justice enhancement under 3C1.1. Under that
 8 guideline, the obstructive conduct related to the defendant's
 9 own offense of conviction, in that had he succeeded in
 10 committing the suborning perjury, the perjury intended as
 11 falsehoods would have been relevant to his own sentencing.
 12 See United States versus Cassiliano, C-A-S-S-I-L-I-A-N-O, 137
 13 Fed. 3d 742 at 746 to 47, Second Circuit 1998. Finding that
 14 an obstruction of justice enhancement was warranted where
 15 defendant's conduct not only impeded another person's case,
 16 but could have affected the Government's investigation into
 17 her own.

18 The obstructive conduct also related to a "closely-
 19 related offense" within the meaning of the guideline, in that
 20 Quiambao and Razzouk were, in effect, co-conspirators in the
 21 same bribery scheme. See United States versus McKay, 183 Fed.
 22 3d 89 at 95 to 96 (Second Circuit 1999) explaining that the
 23 Sentencing Commission's November 1, 1998 amendment to 3C1.1
 24 "instructs that the instruction must relate either to the
 25 defendant's offense of conviction, including any relevant

1 conduct, or to a closely-related case." Moreover, Razzouk's
 2 conduct eviscerated the Government's case against Quiambao.
 3 The Government could not proceed to trial against Quiambao on
 4 the counts for which Razzouk was the necessary witness, which
 5 involved the bulk of the bribes that Quiambao made. For the
 6 same reasons, I find that defendant does not deserve a two-
 7 point downward adjustment for acceptance of responsibility.
 8 Although Razzouk pled guilty, he subsequently engaged in
 9 obstructive conduct that rendered his cooperation, in large
 10 measure, valueless and undermined the Government's prosecution
 11 of Quiambao.

12 His prior acceptance of responsibility is further
 13 undercut by the positions he has taken at sentencing that are
 14 wholly inconsistent with his representations of his guilt at
 15 proffer sessions with the Government and under oath at his
 16 guilty plea allocution. By denying without explanation all of
 17 the criminal conduct that he previously admitted, which has
 18 also been overwhelmingly established by the evidence in the
 19 record, defendant has demonstrated that far from being
 20 remorseful for his criminal actions, he has repudiated any
 21 prior expression of acceptance of responsibility. As is well
 22 within its discretion, the Government has determined that a
 23 potential third point downward adjustment for acceptance of
 24 responsibility should not be awarded.

25 Given these determinations, I calculate defendant's

1 advisory guidelines as follows:

2 As to Count One, the base offense level is 12. The
3 existence of more than one bribe adds two levels. The loss
4 enhancement corresponds with 18 levels, and there is a
5 two-level enhancement for obstruction of justice. The offense
6 level is, therefore, 34.

7 As to the three tax evasion counts, Counts Two
8 through Four, defendant and the Government agree that the
9 adjusted offense level is 24.

10 Given the application of the grouping guidelines, I
11 conclude that defendant's advisory guidelines imprisonment
12 range is 151 to 188 months.

13 Finally, let me simply conclude that is my finding
14 with respect to the advisory guidelines, and I am sure you
15 have a great deal more to say. Go ahead.

16 MR. ZISSOU: Well, Judge, just a couple things, if I
17 might. I am not sure it's appropriate. It might be within
18 your discretion to credit the agents' notes of proffer
19 statements without an opportunity to cross-examine. I think
20 we made it --

21 THE COURT: You did not ask for the agents'
22 testimony. I can consider at sentencing pretty much anything
23 and I can make up my own mind as to the probative value.

24 MR. ZISSOU: I am sure you can, but earlier you
25 remarked about documents, submissions not being sufficient

1 without --

2 THE COURT: No, what I was remarking was that I did
3 not want to see a video that was purely an argument. I do
4 understand that the agents' notes are not under oath, but for
5 purposes of sentencing not everything I consider has to be
6 under oath. I do not consider it argument. I considered your
7 video argument.

8 MR. ZISSOU: Well, nor were the notes ever shown to
9 Mr. Razzouk to confirm or not they are the agents' recollections
10 of what happened. Much of the information is not included. I
11 mean Mr. Razzouk has repeatedly --

12 THE COURT: You know what, your exception is noted.
13 Go on.

14 MR. ZISSOU: All right. Well, that's all I'll add
15 in so far as the advisory guidelines.

16 THE COURT: No, no, I assume you want to make a
17 statement as to the statutory sentencing guideline.

18 MR. ZISSOU: Yes, I do.

19 Well, look, I think we put this in our sentencing
20 memorandum too, but the man sitting before you is not simply
21 the person who was engaged in the conduct that Your Honor has
22 found to be whatever it is you found it to be. He has been
23 through an extraordinary amount in his life. His background,
24 his upbringing, he's overcome a lot. Much of that has been
25 provided to you. Your Honor knows that there are mental

1 health issues here that I am not going to elaborate. I know
 2 that they were directed by the Court and Pretrial recommended
 3 them. I am not going to discuss them in the courtroom. He
 4 has gone through some events in his lifetime with the loss of
 5 his first wife. He is a man who often sees the world
 6 differently from the way others see it. He is the kind of
 7 man, I've noticed myself that he makes strong attachments to
 8 certain individuals, and that was the case with Mr. Quiambao.
 9 Mr. Razzouk, his belief in the strength of their relationship,
 10 best friends Mr. Razzouk called him his best friend, his only
 11 best friend, does in many ways cause him to sometimes fail to
 12 see things that other people might find obvious. That
 13 relationship that they shared, his extraordinary commitment to
 14 him, the part, the manner in which Mr. Quiambao made himself a
 15 part of Mr. Razzouk's family really did affect the way
 16 Mr. Razzouk sees and saw the world.

17 What other person has a -- what else can be said
 18 about making the executor of your estate in whose trust you
 19 place the lives of your family, your children? It really to
 20 me reflects the fact that some folks see things one way and
 21 ten other people may see them a different way. And
 22 Mr. Razzouk's extraordinary commitment to Mr. Quiambao can
 23 only been explained in this way. . He was in every way, and I
 24 know Your Honor has heard this before, but he was every way a
 25 part of their family. And Mr. Razzouk on many levels felt a

1 level of friendship and connection that he never felt in his
2 life. This was at a time when, of course, as you know, his
3 first wife, the mother of his children, died at a very young
4 age after what turned out to be a brief illness, dying in his
5 arms. His family members when he was younger, saw them killed
6 as he grew up under circumstances that the rest of us growing
7 up in the United States for the most part can't even
8 contemplate in the middle of a civil war.

9 Look, I have to tell you he is a caring, generous,
10 committed person, even to the point where, frankly, he looked
11 forward to our weekly meetings. He would come to my office
12 and we would spend Saturday together and his wife Grace would
13 be there. He'd buy lunch for everybody and talk about things
14 that happened in a way that -- well, let's just say, logically
15 one might see differently. Numbers on checks, that has always
16 been from the beginning what the Government's view of this
17 case was, numbers on checks meant everything. Nothing ever
18 changed after that. Whatever Mr. Razzouk said, whatever he --
19 whatever recollection he had, it wasn't what theirs was.

20 Now, look, I don't know. I wasn't there. I don't
21 know what went on between these two men. I don't know why
22 they traveled so often together. I do know that they planned
23 great things, and even Mr. Razzouk will tell you that. And if
24 he was asked I guess he would tell you that Mr. Quiambao was
25 too generous, paid him too much, but he did an extraordinary

1 amount of work.

2 As I said, his wife would testify as to all the
3 conversations they had of Mr. Razzouk constantly doing work
4 for Mr. Quiambao. This is not a man who went about an effort
5 to undermine his employer. His recollection of what happened
6 was, despite the relationship that he had with Mr. Quiambao,
7 he always made sure to protect his employer. He gave more --
8 I thought I put this in my objection letter, I acknowledged
9 it, that what he did was he allowed, because of their
10 relationship, because of their friendship, he allowed
11 Mr. Rudell [sic] more opportunities to bid. But in his mind,
12 the actual quid pro quo was Con Ed was properly served. They
13 didn't lose money. Mr. Quiambao did the work. And we've gone
14 on and on about this insofar as the restitution submissions, I
15 know you are not to that yet, but that's what it looks like.
16 It looks abundantly clear that Con Ed suffered no loss. And
17 that's because, again, as we submitted and Mr. Razzouk has
18 said from the beginning, he made sure that that was so.

19 And while it's true, and Your Honor has found that
20 Mr. Quiambao improperly paid Mr. Razzouk in whole or in part,
21 that's really entirely up to the Court, Con Ed didn't suffer a
22 loss. They just didn't. And they have, despite their
23 efforts, not proven any loss in my view, and that's in large
24 part because Mr. Quiambao did the work. And Mr. Razzouk,
25 among other people at Con Ed, favored Mr. Quiambao because of

1 the work that he did.

2 And so in Mr. Razzouk's mind, whatever intent he
3 formed or did not form, he was able to keep the relationship
4 separate by ensuring that his employer was protected.

5 Was it inappropriate for him to betray his employer?
6 Absolutely.

7 Was it something he should have communicated to them
8 that he was having this relationship with Mr. Quiambao? No
9 question about it.

10 But in his mind, he genuinely believes that is how
11 this played out. He is not, as Your Honor might otherwise
12 conclude without this understanding of him, of the kind of man
13 that he really is, Your Honor might otherwise conclude that
14 this was just an act of greed, and it was not. Simple as
15 that. And that's why I've said in the submission from the
16 beginning that the loss to Con Ed is a fundamental sentencing
17 factor. It's fundamental 3553(a) factor, which is why we
18 spent so much time on that focus alone because, obviously, I
19 understand that reasonable people may differ about the
20 interpretation of notations on the check, and I understood the
21 difficulty of proving how much was legitimately earned and how
22 much was not, if anything.

23 The guidelines here are wildly overstated. He's a
24 first-time non-violent offender. He is 62 years old. And the
25 likelihood of recidivating at his age is non-existent

1 according to the numbers that the Sentencing Commission keeps.
 2 A lengthy jail sentence is hardly necessary in this case.
 3 Although I understand Your Honor has to consider all of the
 4 factors set forth in 3553(a), I do not think a lengthy jail
 5 sentence is appropriate here. Indeed, I think a period of
 6 probation with a long period of house arrest would be
 7 appropriate. He has never seen the inside of a jail. He has
 8 been through an extraordinary amount. The acts that form the
 9 basis of this Indictment, you know, I know you might look at
 10 me in this, but I am only responsible for the last eighteen
 11 months. The first five or six years or seven years was all on
 12 the Government. The tax events were '7, '8 and '9, it's 2018.
 13 The arrest was in January of 2011. We are talking about
 14 almost a decade since the acts that gave rise to the charges
 15 in this case have occurred. Clearly, absent more, the
 16 imposition of a lengthy jail sentence under those
 17 circumstances seems to me resulting in a sentence greater than
 18 necessary and would violate Section 3553(a) of Title 18.

19 So for all of those reasons, Judge, notwithstanding
 20 the rather litigious circumstances of this case and, frankly,
 21 it's not like I wanted to be in this position. When I first
 22 took over this case it was August of 2016 or so, the first
 23 thing I did was try to, okay, let's see if we can fix this.
 24 And along the way, you know, there were discussions about,
 25 well, you know, he really did provide substantial assistance

1 and that's how the sentencing memorandum is going to read and
 2 we are not going to object to acceptance of responsibility.
 3 But things changed, whether it was my fault or Mr. Tuchmann's
 4 fault that we ended up litigating, and it got out of hand.
 5 But it's not as if I wanted to end up where we are now, nor
 6 did Mr. Razzouk. There could have been an opportunity to
 7 resolve this without the extensive litigation, but frankly,
 8 Judge, no one on that side was ever inclined, after
 9 Mr. Tuchmann's predecessor, to do so. No one ever -- no one
 10 ever suggested after she left that there were issues that we
 11 could resolve. And, of course, Your Honor knows that along
 12 the way I was trying to get status conferences so I could get
 13 a sense of how could we resolve some of these issues, rather
 14 than having to preserve every single legal issue that I could
 15 imagine. And it was only, frankly, as you know, recently when
 16 based on a third-party request that the Government even
 17 suggested that they -- that the Asset Forfeiture Unit might be
 18 willing go along with the rescission. It's something I've
 19 been suggesting for years, and no one listened. As soon as
 20 the third-party application made just last week, and now
 21 they're willing to be open-minded. That was always a no. So
 22 there is a reason we got to this position.

23 THE COURT: The application was actually made a long
 24 time ago, many, many years ago, long before I became
 25 associated with the case.

1 MR. ZISSOU: I beg your pardon, Judge?

2 THE COURT: Many years ago, many years before I
3 became associated with the case. It was over five years ago
4 that the application was made. I just wanted you to
5 understand it did not just happen.

6 MR. ZISSOU: Oh, and I wasn't in there. I can only
7 tell you --

8 THE COURT: It was on the docket.

9 MR. ZISSOU: Oh, yes, I understand, the request for
10 the ancillary proceeding. But the willingness of the
11 Government to consider it, that's a new event as far as I am
12 concerned and it was only -- it was only based on
13 Mr. Tuchmann's letter filed last week that the folks at the
14 DOJ are willing to give it some consideration before Your
15 Honor makes whatever rulings are appropriate in this case. So
16 it's not as if we weren't there. It's not as if we've
17 purposely got into the weeds and tried to litigate every
18 conceivable issue. We did this because in the end there
19 really was nothing in the way of alternative. And
20 notwithstanding anything, and even if Your Honor does not take
21 into consideration that as a 3553(a) factor, there is more
22 than enough here to justify or I should say there is simply
23 not enough here to justify a lengthy custodial sentence, given
24 the circumstances; his age, lack of prior criminal history,
25 and the matters that I discussed and I would urge Your Honor

1 not to impose such a sentence.

2 THE COURT: Thank you.

3 Mr. Razzouk, is there anything that you would like
4 to say?

5 THE DEFENDANT: No, Your Honor.

6 MR. ZISSOU: He said no, Your Honor.

7 THE COURT: Mr. Tuchmann.

8 MR. TUCHMANN: Thank you, Your Honor.

9 Where to begin in this case? Well, may I stay
10 seated?

11 THE COURT: Certainly.

12 MR. TUCHMANN: Thank you, Your Honor.

13 Before we even kind of get to the sentencing, just
14 one note with respect to the sealing of submissions. I think
15 there were a couple of submissions that were filed under seal
16 by the defense. While the Government has no objection to
17 redacting them to --

18 THE COURT: That's fine.

19 MR. TUCHMANN: -- keep personal information out.

20 THE COURT: That is something I forgot to address,
21 but those should be unsealed. If there is something
22 particular that you want redacted --

23 MR. ZISSOU: I will take care of it.

24 THE COURT: -- let me know.

25 MR. TUCHMANN: I would just like to respond to a

1 couple of points that were just made by counsel.

2 The idea that this is somehow on the Government
3 because the defendant can't tell the truth and that,
4 therefore, he has to litigate everything, it's absurd. It is
5 absolutely absurd. The defendant is in this position because
6 he is taking positions that are contrary to the truth and to
7 the evidence. There is no one else responsible for the
8 litigious nature of how this process has gone than him. He
9 submitted objections to the PSR in which he denied that he
10 committed the crime that he allocuted to so clearly under
11 oath, and then has the nerve to complain that he is not
12 getting acceptance points after he's now denying that he
13 committed that crime. It boggles the mind, really. That's
14 why we are here and in this position. Once the defendant took
15 those positions, of course the Government is going to respond
16 with the truth as corroborated by the evidence of which, as
17 Your Honor noted, it's not just the numbers on the checks,
18 notations on the checks. Obviously, devastating evidence that
19 they are, there is a lot more evidence than that. I won't go
20 through it, Your Honor already has done that, but I just
21 wanted to make those points to begin.

22 With respect to the sentence, I guess the first
23 thing is I want to make sure I don't need to, I feel the Court
24 is obviously aware in considering it, before we get to the
25 sort of post-plea conduct, the underlying offense conduct is

1 egregious: \$13 million in bribes over the course of a decade
 2 as part of the relevant conduct, over a decade. It is an
 3 enormous amount of money, a long-standing scheme. It harmed
 4 Con Ed and its rate payers and stakeholders. It's a very
 5 serious crime. So, obviously, we can't lose, shouldn't lose
 6 site of that, but also what makes this case so uniquely
 7 egregious is the nature of the obstructive conduct.

8 I have been here for ten years in the office and
 9 never heard of anything quite like it in its -- and just so
 10 damaging. The Government's process of using cooperating
 11 witnesses to make important cases. We talk about general
 12 deterrence. It's important for there to be general deterrence
 13 with respect to the underlying criminal conduct, but it's as
 14 important, if not more, in this case that there would be
 15 general deterrence considered for this sentence and
 16 considering what the defendant did in connection with his
 17 cooperation and his obstruction.

18 The Government indicted someone on serious felony
 19 charges because of his information and because of what he did
 20 by going behind the Government's back to try and suborn
 21 perjury, to propose perjury, to propose obstructing Quiambao's
 22 case, the level of interference and obstruction of the
 23 criminal justice process is just hard to overstate what he
 24 attempted to do, and then lie about it to the Government when
 25 he first came back after the meeting at the hotel and to tell

1 the Government that this meeting was not his idea, that it was
2 Quiambao's idea. It was only because, only because
3 Mr. Quiambao recorded the conversation that the Government is
4 able to truly understand what happened. The breach of trust
5 is so egregious it needs to be punished and it needs to be
6 deterred.

7 The other thing which is so egregious about this
8 case is the willful denial of responsibility in the face of
9 such overwhelming evidence. After a guilty plea it's unheard
10 of in my experience and it just, again, demonstrates a
11 disrespect for the whole process. He just perjured himself
12 again today before Your Honor. It cannot be countless. It
13 cannot. You know, Mr. Zissou just talked about how there
14 wouldn't be recidivism. I mean I think we know that those
15 studies are really about kinds of violent crime, mostly that's
16 what most of those studies are about. Mr. Razzouk was already
17 a middle-aged person when he was committing these crimes.
18 It's not like he can't commit them again in the sense that
19 he's out and doing things, but when a person comes in and lies
20 at his own sentencing hearing about having not committed the
21 crime, who knows what he's capable of in terms of what other
22 kinds of frauds and deceptions he will work afterwards if he
23 has the opportunity.

24 It's astounding, and for those reasons and the
25 extraordinary circumstances of this defendant's conduct the

1 Government submits that a very severe guidelines sentence is
2 appropriate in this case.

3 Your Honor, I would just note that there are
4 representatives of the victims here if Your Honor wishes to
5 give them opportunities to speak at some point.

6 THE COURT: They may be entitled to.

7 MR. TUCHMANN: I'm sorry, I meant when Your Honor
8 wishes to give them an opportunity.

9 THE COURT: Yes, now would be appropriate.

10 MR. TUCHMANN: I am not sure if they wish to.

11 THE COURT: I know.

12 MR. McINERNEY: Judge, Dennis McInerney for Con
13 Edison. I think we've fully submitted our costs.

14 THE COURT: There have been enormous compendiums of
15 submissions, and I think you can tell that I have reviewed
16 them very closely, but if anyone has anything to add.

17 MR. McINERNEY: No, Your Honor, we totally see that
18 and we rest on our papers at this point. Certainly if you
19 have any questions, we are happy to answer them.

20 THE COURT: Is that it? Okay.

21 Well, as indicated, I have calculated and considered
22 the advisory sentencing guideline range.

23 Turning to the remaining statutory factors, the
24 crimes that Razzouk committed are undoubtedly of an extremely
25 serious nature warranting a severe punishment. Razzouk

1 engaged in a bribery scheme of staggering proportions over a
 2 lengthy period of time, likely depriving his employer Con
 3 Edison and, ultimately, taxpayers of a substantial amount of
 4 money. In this regard there is evidence that Quiambao paid
 5 Razzouk in excess of \$13 million over a period of more than
 6 ten years. More to the point, it has been amply established
 7 in the record of this sentencing proceeding that within the
 8 six-year timeframe of the bribery charged, Quiambao and his
 9 companies paid Razzouk over \$8 million in exchange for
 10 Razzouk's corrupt assistance to Quiambao in securing for
 11 Rudell profitable contracts from Con Edison.

12 Further, as charged in the tax evasion counts to
 13 which Razzouk also entered guilty pleas, he failed to report
 14 income in an amount exceeding the \$5 million over a three-year
 15 period, depriving the Government of approximately \$1.7 million
 16 in taxes owed over those years, not including interest and
 17 penalties.

18 Defense counsel asserts, and I have absolutely no
 19 reason to doubt, that there existed a lengthy and complicated
 20 personal relationship between Razzouk and Quiambao. Whatever
 21 the nature and reasons for their unusual power dynamic,
 22 however, I view the two actors as mutually dependent upon one
 23 another. Of particular relevance to the illegal elements of
 24 their relationship, both participants reaped substantial
 25 financial benefit from their illicit venture and neither

1 repudiated or in any way sought to limit, much less terminate,
2 their lucrative scheme. Whatever the other aspects of their
3 relationship, therefore, I do not consider the association
4 between Razzouk and Quiambao as a factor that either
5 aggravates or mitigates the seriousness of Razzouk's offenses.

6 Given the nature and seriousness of defendant's
7 crimes, the statutory sentencing goals of just punishment, and
8 the need for general deterrence, require a sentence of
9 considerable severity. As to general deterrence, it is true
10 as the Government has argued that crimes of this nature do not
11 often come to light and that because of the likely victims,
12 the taxpayers are often unaware of any misconduct, these cases
13 are difficult to prosecute. Moreover, while the the defendant
14 may have faced difficulties during his life, the extraordinary
15 extent to which the bribery scheme escalated is plainly
16 attributable to greed. In such a case it is important to
17 impose a sentence that sends a clear message deterring others
18 in a position to be subject to similar temptations.

19 Turning to the history and characteristics of the
20 defendants, a number of facts may be viewed as somewhat
21 mitigating. These include the following: Razzouk is now 60
22 years old and has had no prior involvement in the criminal
23 justice system. Born in Lebanon, he resided there with his
24 family during the civil war when, as described in detail in
25 the pre-sentence report and defense counsel's sentencing

1 submission, he and his family experienced immense suffering
2 and the defendant witnessed many atrocities first-hand.

3 In 1976 the defendant emigrated to the United States
4 and subsequently became a naturalized citizen. He married in
5 1987 and became a father of two children. Tragically, the
6 defendant's wife developed cancer and died at a young age,
7 leaving the defendant to raise his two daughters by himself.
8 He has since remarried in 2004, and in 2011 he retired from
9 Con Edison after approximately 34 years of employment there.
10 It is in connection with that employment that he committed the
11 instant crimes.

12 The defendant suffers from various medical ailments,
13 including GERD, a bleeding ulcer, herniated disks and other
14 severe arthritic degenerative changes in his neck and back,
15 rheumatoid arthritis and enlarged prostate. He has been
16 diagnosed with adjustment disorder with mixed anxiety and
17 depressed mood.

18 There are two other matters that the Probation
19 Department has identified as mitigating. The first is the
20 relationship between defendant and Quiambao, and the second is
21 the defendant's initial cooperation with the Government.

22 As indicated, I am unpersuaded that either matter is
23 of any significant value in mitigating the seriousness of
24 defendant's crimes. To reiterate, whether or not Razzouk was
25 initially vulnerable to accepting money from Quiambao, it is

1 clear that there came a time when Razzouk accepted Quiambao's
2 bribes on the understanding that they were given to secure his
3 assistance in the awarding of Con Ed contracts. From that
4 time on, Razzouk was a willing and full-fledged participant in
5 the bribery scheme, which reaped him at least \$8 million in
6 bribes.

7 As to Razzouk's initial cooperation with the
8 Government, much of its value to the Government evaporated
9 when Razzouk advised Quiambao that he intended to lie at
10 Quiambao's trial by testifying that all of the money Quiambao
11 had given him was for services unrelated to the business of
12 Con Ed and importuned Quiambao to testify falsely to the same
13 untruths. As previously indicated, however, I have considered
14 as mitigating Razzouk's cooperation against two other
15 defendants.

16 Balancing the various pertinent sentencing factors
17 enumerated in the sentencing statute at Section 3553(a), I
18 conclude that an incarceratory sentence of 78 months, together
19 with the other aspects of his sentence to impose is
20 sufficient, but not unduly severe, to accomplish the goals of
21 sentencing. Six-and-a-half years imprisonment is undeniably a
22 severe sentence, that in my view both reflects the seriousness
23 of defendant's offenses and serves the goal of general
24 deterrence. At the same time I believe it accommodates the
25 mitigating factors noted above.

1 Accordingly, I sentence the defendant on Count One
2 to the custody of the Attorney General for a period of 78
3 months; and on Counts Two through Four to the custody of the
4 Attorney General for the period of 60 months. The sentences
5 on each count to run concurrently.

6 I also sentence Mr. Razzouk to a three-year period
7 of supervised release, with the following special conditions:

8 That he make restitution to Con Ed and National
9 Union in an amount of \$6,867,350.51 plus prejudgment interest.
10 The rationale for which is set forth in the Statement of
11 Reasons that I will supply in a moment; that he comply with
12 the \$6,515,809 forfeiture money judgment, which I gather he
13 has already done; that he cooperate with the IRS in the
14 assessment and payment of all tax owed, subject to my ruling
15 on the outstanding dispute, which I will address in a moment;
16 that he make full financial disclosure to the Probation
17 Department to the extent that he has not yet done so. In that
18 regard, the defendant shall provide the U.S. Probation
19 Department with full disclosure of his financial records,
20 including comingled income, expenses, assets and liabilities,
21 to include yearly income tax returns.

22 The defendant is prohibited from maintaining and/or
23 opening any individual and/or joint checking, savings or other
24 financial accounts for either personal or business purposes
25 without the knowledge and approval of the United States

1 Probation Department. The defendant shall cooperate with the
2 probation officer in the investigation of his financial
3 dealings and should provide truthful monthly statements of his
4 income and expenses. The defendant shall cooperate in the
5 signing of any necessary authorization to release information
6 forms permitting the Probation Department access to his
7 financial information and records.

8 And I prohibit possession of a firearm, ammunition
9 or other destructive device.

10 Given the forfeiture and restitution orders, I find
11 that defendant is unable to pay a fine, but will impose the
12 mandatory \$400 special assessment.

13 Finally, I will address the issue of the defendant's
14 restitution beginning with what he owes to the Internal
15 Revenue Service. As part of his plea agreement, Razzouk was
16 obligated to recalculate the federal income tax owed for the
17 years 2006 to 2010 and to prepare and file accurate amended
18 returns for those years. The amended returns he subsequently
19 proffered, however, adopted a strategy of characterizing as
20 loans the entire \$6.5 million he was required to forfeit by
21 his cooperation agreement and deducting that amount from
22 taxable income as if it constituted legitimate business
23 expenses. By this manipulation, he sought to avoid paying
24 taxes on his criminal forfeiture obligation.

25 As the Government correctly asserts, however, the

1 Internal Revenue Code and regulations expressly forbid the
2 defendant from using a "fine or similar penalty" to reduce his
3 taxable income. 26 United States Code Section 162(f), 26 CFR
4 Section 1.162-21(b)(1). As the Government also correctly
5 urges, caselaw construing the quoted provision of the code and
6 regulations holds that criminal forfeiture payments identical
7 in nature to those at issue in this case fall squarely within
8 that provision and, thus, cannot be deducted from income
9 taxes. See, for example, United States versus Nacchio,
10 N-A-C-C-H-I-0, 824 Fed. 3d 1370, Federal Circuit 2016. Put
11 another way, because Razzouk, in fact, acquired monies
12 constituting ill-gotten gains over multiple tax years, he
13 remained liable for payment of taxes on those monies. Nothing
14 justified nonpayment of the taxes.

15 In a subsequent letter, defense counsel retreats
16 from his characterization of defendant's criminal forfeiture
17 as a loan, urging instead that the proposed unorthodox tax
18 treatment of his client's criminal forfeiture arises via
19 operation of Title 21 United States Code Section 853(c).
20 Invoking this section he reasons that because pursuant to that
21 provision titled to forfeited assets covered by the provision
22 vest in the United States "at the time of the criminal act
23 giving rise to the forfeiture," the assets that his client
24 forfeited by his cooperation agreement was income that never
25 actually vested in Razzouk. As a result, he concludes the

1 subsequent deduction of the forfeited funds from taxable
2 income was proper.

3 The flaw in counsel's argument is that it is
4 predicated on a statutory provision that he has ripped from
5 its limited, unambiguous context and is, therefore, wholly in
6 apposite. Section 853(c), which references Section 853(n),
7 addressing issues of title to forfeited assets solely in the
8 context of the interests of potential third-parties. That is,
9 it concerns those forfeitures where a third-party may have an
10 interest in forfeited assets that may be superior to that of
11 the Government. No such third-party issues are present in
12 this case. Defendant's forfeiture obligation runs solely to
13 the Government and 853(c) provides no basis to eliminate it.

14 As a final justification for eliminating his
15 client's restitution obligation, counsel asserts that a prior
16 prosecutor, who is no longer associated with the United States
17 Attorney's office, sanctioned the tax manipulations that
18 accomplished that end. As a result, defense counsel contends
19 the Government's current "belated objection" constitutes "a
20 waiver of the argument it now advances." The contention is
21 meritless. An initial flaw in counsel's argument is that it
22 is based on counsel's mere hearsay assertion and is,
23 therefore, of no probative value in this proceeding. More
24 importantly, it is undercut by the explicit language of
25 defendant's cooperation agreement. Paragraph 19 of that

1 agreement states that: "The defendant agrees that the
2 forfeiture of the above sum of money is not to be considered
3 payment on any income taxes that may be due."

4 As the Government aptly notes, "This provision makes
5 clear that the defendant understood that his forfeiture
6 payment was neither the kind of expense that is deductible
7 from his income tax liability, nor a payment towards his
8 income tax liability." That is at the Government's response,
9 ECF number 71 at page 2. Rendering hollow any subsequent
10 claim by the defendant of unfair surprise. Pertinent, too,
11 was the provision of the agreement that: "Apart from stated
12 written proffer agreements, no promises, agreements or
13 conditions have been entered into other than those set forth
14 this agreement, and none will be entered into unless
15 memorialized in writing and signed by all parties." That is
16 from the plea agreement at paragraph 21.

17 Thus, the language of the agreement explicitly
18 barred reliance on oral understandings such as the one defense
19 counsel advances here. In addition, the fact that the
20 defendant may have told a former prosecutor that he was filing
21 amended returns claiming unsupportable deductions does not
22 mean that the IRS accepted the amended returns. As the
23 Government explains, the IRS can acknowledge receipt of the
24 amended returns without agreeing to the defense counsel's
25 calculation of the taxes set forth therein.

1 Given that the defendant pled guilty to a tax crime,
2 it was completely appropriate of the IRS to await the
3 conclusion of defendant's criminal case to reject the
4 calculations defendant made in the amended returns he filed.

5 More importantly, even assuming the defendant was
6 misled by an oral statement purportedly made by the prior
7 prosecutor after execution of the cooperation agreement and
8 that some five years passed before defendant was disabused of
9 the misconception, there is simply no prejudice to the
10 defendant warranting blank waiver of the IRS's right to
11 restitution. Certainly, the Government did not knowingly
12 relinquish a known right to restitution on behalf of the IRS
13 explicitly established by the cooperation agreement. At
14 worst, defendant was prejudiced by incurring interest and late
15 fees from the date in 2012 when he filed the inaccurate
16 amended returns. Since the Government has withdrawn any
17 request that restitution include penalties for late payment of
18 the defendant's tax obligations, that's at the Government's
19 tax response at Note 1 on page 3, and because I intend to
20 limit the interest that accrued on the restitution owed, any
21 possible prejudice to the defendant will be wholly
22 ameliorated.

23 As to interest, the Government has requested that I
24 include in defendant's tax restitution the interest accrued on
25 the restitution owed to the IRS between the time he filed his

1 amended returns on October 2, 2012 to December 1, 2017. In
2 the alternative, the Government asks that I order that he pay
3 restitution in the amount of tax and interest owed as of
4 October 2, 2012, the date the defendant filed his amended
5 returns. That is in the same document at page 3, Note 2.

6 Over five years has passed since the defendant filed
7 his amended returns, and until his meeting with Quiambao on
8 December 18 of 2015 he was acting as a cooperator for the
9 Government. In response to the Government's request to hold
10 the PSR in abeyance, see ECF number 18, neither Judge Mauskopf
11 nor I proceeded to sentence the defendant or calculate the
12 amount of tax restitution he owed. Given the delays in
13 sentencing, some occasioned by the defendant, and others
14 beyond the defendant's control, I exercised my discretion, see
15 United States v. Qurashi, Q-U-R-A-S-H-I, 634 Fed. 3d, 699 at
16 704, Second Circuit 2011, to order that the defendant pay
17 restitution to the IRS in the total amount of \$1,982,238.34,
18 which reflects the amount of tax and interest owed as of
19 October 2, 2012, the date defendant filed his amended returns.

20 As I indicated as to restitution to Con Ed and
21 National Union, I award \$6,867,350.51, plus pre-judgment
22 interest as further explained in the written opinion that I am
23 now giving you.

24 (Pause.)

25 THE COURT: Mr. Razzouk, as you know there are

1 circumstances in which you may appeal the sentence. You can
2 discuss that with your lawyer. If you choose to appeal, a
3 notice of appeal must be filed within 14 days. If you could
4 not afford counsel, a lawyer would be appointed to represent
5 you.

6 Is there any particular requested designation?

7 MR. ZISSOU: Judge, would you kindly recommend
8 northeast region, Otisville actually I think it would be?

9 THE COURT: I will recommend Otisville.

10 MR. ZISSOU: And would you give time until he's
11 designated to surrender?

12 THE COURT: Yes.

13 MR. TUCHMANN: I'm sorry, when you say time, is
14 there a time for a report date?

15 THE COURT: Dennis is calculating the date right now.

16 MR. TUCHMANN: I see. Thank you, Your Honor.

17 THE COURTROOM DEPUTY: May 21st at 12 noon.

18

19 (Matter concluded.)

20

21 ooo0ooo

22 I certify that the foregoing is a correct transcript from the
23 record of proceedings in the above-entitled matter.

24 /s/ Stacy A. Mace

April 3, 2018

25 _____
STACY A. MACE

DATE